

# ACT No. 423

Regular Session, 2014

HOUSE BILL NO. 770

BY REPRESENTATIVE PRICE

## AN ACT

To amend and reenact R.S. 32:781(5) and (13)(a)(i), to enact R.S. 32:792(B)(17) and 796, and to repeal R.S. 32:792(B)(1)(d) and 795, relative to used motor vehicle dealers; to amend the definitions of motor vehicle and used motor vehicle dealer; to provide relative to false, misleading, or unsubstantiated advertising in connection with a used motor vehicle dealer business; to provide relative to the deposit and down payment disclosure and delivery pending a sale by a used motor vehicle dealer; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:781(5) and (13)(a)(i) are hereby amended and reenacted and R.S. 32:792(B)(17) and 796 are hereby enacted to read as follows:

### §781. Definitions

As used in this Chapter:

\* \* \*

(5) "Motor vehicle" means any motor-driven car, van, or truck required to be registered pursuant to the Vehicle Registration License Tax Law, R.S. 47:451 et seq., or any vehicle manufactured for off-road use and issued a manufacturer's statement or certificate of origin, as required by the Louisiana Motor Vehicle Commission, that cannot be issued a registration certificate and license to operate on the public roads of this state because, at the time of manufacture, the vehicle does not meet the safety requirements prescribed by R.S. 32:1301 through 1310 which is used or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for-hire purposes ~~and~~; including but not limited to motor homes, motorcycles, all-terrain vehicles, recreational vehicles, travel trailers, boat

trailers, ambulances, buses, fire trucks, conversion vehicles, wreckers, semitrailers,  
hearses, and marine products, as any of the terms are defined in R.S. 32:1252.

\* \* \*

(13)(a)(i) "Used motor vehicle dealer" means any person, partnership,  
corporation, limited liability company, or other entity who, for a commission or with  
intent to make a profit or gain of money or other thing of value, buys, sells, brokers,  
exchanges, rents with option to purchase, auctions at retail or public, offers, or  
attempts to negotiate a sale or exchange of an interest in used motor vehicles and  
who is engaged wholly or in part in the business of buying and selling used motor  
vehicles, whether such motor vehicles are owned by such person and whether the  
motor vehicles are sold from a dealership location or via any form of advertising,  
including but not limited to the Internet. A person shall be presumed to be engaged  
in the business of selling used motor vehicles if he sells five or more used motor  
vehicles in any twelve-month period which vehicles are not registered to and insured  
by members of the individual's household, immediate family members, or legal  
entities in which the individual has an ownership interest ~~in or is employed by or~~  
which employ the individual. An entity shall be presumed to be engaged in the  
business of selling used motor vehicles if the entity sells five or more used motor  
vehicles which are not registered to and insured by the entity or by an entity  
affiliated with the entity receiving anything of value.

\* \* \*

§792. Denial, revocation, or suspension of license; grounds; unauthorized acts

\* \* \*

B. The commission may revoke or suspend a license, issue a fine or penalty,  
or enjoin a used motor vehicle dealer, dealer in used parts or used accessories of  
motor vehicles, used motor vehicle auctioneer, or salesperson for any of the  
following conduct:

\* \* \*

(17) Use of false, misleading, or unsubstantiated advertising in connection  
with his business. For the purpose of this Paragraph, false, misleading, or

1        unsubstantiated advertising in connection with the sale of a used motor vehicle shall  
2        include but not be limited to the following:

3                (a) Making unsubstantiated claims regarding the dealership, such as being  
4                the "largest" or "biggest" dealer, or being the "number one dealer" in an area.

5                (b) Advertising that notes will not have to be paid by the customer for a  
6                certain period of time, unless the dealer can substantiate the delay in payment and  
7                unless the delay is offered to all customers without restriction or limitation.

8                (c) Advertising a loan interest rate without including all restrictions or  
9                limitations in the same size lettering.

10               (d) Advertising guaranteed credit approval without including all restrictions  
11               or limitations and any required credit rating in the same size lettering.

12               (e) Advertising a monthly note without restriction or limitation and without  
13               reference to an approved credit rating in the same size lettering.

14               (f) Advertising a guaranteed amount for trade-ins.

15               (g) Advertising a price other than the full cash price for which the vehicle  
16               will be sold, except for tax, title, and license, which must be referenced.

17               (h) Advertising a price without providing a complete and accurate  
18               description of the vehicle, including make, model, year, and any identification and  
19               serial number of the vehicle.

20               (i) Performing a "bait and switch" in which the dealer does not have the  
21               vehicle advertised for sale and has not had the vehicle within a reasonable time from  
22               the advertisement.

23                                \*        \*        \*

24               \$796. Deposit and down payment disclosure and delivery of vehicle pending the  
25               sale

26               A. In every transaction between a used motor vehicle dealer and a customer  
27               in which the customer provides a deposit on a used motor vehicle, the used motor  
28               vehicle dealer is required to provide a statement that the deposit given is on an  
29               agreement to purchase, and not an actual sale. The agreement shall clearly state that

1       ~~no transaction has actually occurred, that no sales documents have been completed,~~  
2       ~~and that the deposit is merely intended as a hold on a vehicle.~~

3           B. In every transaction between a used motor vehicle dealer and a customer  
4       in which the customer provides a down payment for the purchase of a used motor  
5       vehicle, the used motor vehicle dealer is required to provide, either on the bill of  
6       sale, or by separate agreement, a statement that the sale is conditioned upon certain  
7       identifiable events, such as financing or obtaining state-mandated compulsory  
8       automobile insurance.

9           C. In every transaction between a used motor vehicle dealer and a customer  
10       in which the customer provides either a down payment or a deposit for the purchase  
11       of a used motor vehicle, the used motor vehicle dealer shall complete a disclosure  
12       statement containing the terms and conditions of the transaction, including but not  
13       limited to the following:

14               (1) The amount of the deposit or down payment.

15               (2) Whether the money given is either a deposit or down payment.

16               (3) Terms and conditions for return or forfeiture of the customer's deposit or  
17       down payment.

18               (4) A time limit in which to complete the transaction not to exceed twenty  
19       days.

20               (5) A complete description of the motor vehicle to be sold including the  
21       make, model, year, and any identification and serial numbers.

22               (6) The price of the vehicle and a description of the vehicle including the  
23       make, model, year, identification, and serial number and its condition.

24               (7) The amount of the trade-in allowance and a description of the trade-in  
25       vehicle including the make, model, year, identification, and serial number and its  
26       condition.

27           D. If the dealer allows the customer to take delivery on a vehicle which is  
28       the subject of either a deposit or a down payment, a pre-delivery sale disclosure  
29       statement from the dealer and the customer shall include the following:

1                    (1) A condition report which clearly identifies any noticeable damage to the  
2                    vehicle before it is released to the customer.

3                                (2) A statement that if the dealer withdraws from the agreement to purchase,  
4                                the customer will be responsible only for damages beyond normal wear and tear  
5                                occurring during the customer's use of the vehicle, the amount of which may be  
6                                deducted from the deposit or down payment.

7                   (3) A statement that if the customer withdraws from the agreement to  
8                   purchase, the customer shall be responsible not only for damages occurring during  
9                   the customer's use of the vehicle but also for usage of the vehicle at a day rate not to  
10                  exceed twenty-five dollars per day and thirty-five cents per mile, which may be  
11                  deducted from the deposit or down payment.

12                   (4) A statement that if the customer either withdraws from the agreement to  
13                   purchase or fails to return the vehicle at the expiration of the term of the agreement,  
14                   the dealer may seek repossession of the vehicle by any lawful means.

15                   (5) A statement that if the dealer withdraws from the agreement to purchase  
16                   that the dealer must give written notice, by certified or registered mail, to the  
17                   customer at least five days prior to taking repossession of the vehicle which may be  
18                   done by any lawful means, and only upon return of the deposit in accordance with  
19                   this Section.

20 E. It shall be unlawful and constitute a violation of this Chapter for any used  
21 motor vehicle dealer to fail to follow any of the provisions of this Section.

22 \* \* \*

23 Section 2. R.S. 32:792(B)(1)(d) and 795 are hereby repealed in their entirety.

**SPEAKER OF THE HOUSE OF REPRESENTATIVES**

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_